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C O N F I D E N T I A L SECTION 01 OF 04 CARACAS 000306

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SUBJECT: CHAVEZ PREPARING MAJOR CHANGES TO CONSTITUTION

REF: A. CARACAS 000219
[B.](#) CARACAS 000264

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Classified By: POLITICAL COUNSELOR ROBERT DOWNES,
REASONS 1.4 (B) AND (D)

[¶](#)1. (C) Summary. President Chavez intends to make profound "socialist" changes to the 1999 Constitution via a constitutional "reform" process this year. Chavez says this effort will "complement" the executive decree-laws that he can issue over the next 18 months courtesy of the Enabling Law (Ref A). Chavez hand-picked 13 loyal supporters to draft and recommend changes to the constitution; that group will reportedly pass a first draft to Chavez the week of February [¶](#)12. Chavez's key goals are to 1) eliminate presidential term limits; 2) shift power from state and local governments to the executive; 3) assert even greater state control over the economy; and, 4) make symbolic changes consistent with the "socialist" direction of the government. The opposition is preparing to present alternative proposals and possibly challenge Chavez on procedural grounds, but with no opposition votes in the National Assembly or any prospect of impartial judicial review, Chavez can be expected to get the constitutional changes he wants. End Comment.

Three Ways to Change the Constitution

[¶](#)2. (SBU) President Chavez made founding a new constitution a priority soon after his election in 1998, and he led the successful efforts to get the 1999 Constitution approved via a popular referendum. Eight years later, Chavez now says the constitution needs major changes to help usher in "Socialism of the 21st Century." No changes have ever been made to the 1999 Constitution as yet. The Venezuelan constitution may be changed in three ways: via amendment, reform, and constituent assembly. Amendments may be made to make "alterations and modifications to one or various articles of the Constitution, without altering the fundamental structure" (Article 340). Fifteen percent of the registered voters or thirty percent of the National Assembly (NA) members may propose amendments. To pass, a majority in the legislature must read and approve the amendment twice. It must then be approved via a national referendum.

[¶](#)3. (U) Constitutional "reforms" may be made to institute

"partial revision or the substitution of one or various norms without altering the structure and fundamental principles of the Constitution" (Article 342), and must enjoy more support in the National Assembly to be proposed and approved.

Fifteen percent of registered voters, a majority of the NA, or the President and cabinet may propose constitutional reforms. To pass, the NA must read and approve the changes three times by a two-thirds majority and then it must be approved in a national referendum by a simple majority of the votes cast. The Constitution allows for "reforms" to be packaged together or separated in batches when put to a popular referendum.

¶4. (U) A Constituent Assembly is the designated means for "transforming the state, creating a new juridical order, and drafting a new Constitution" (Article 347). The President and cabinet, two-thirds of the National Assembly, two-thirds of municipal councils, or 15 percent of the registered voters may convvoke a Constituent Assembly. The 1999 Constitution does not specify how constituent assembly delegates are to be chosen or how many there should be. It also does not necessarily require that a new constitution be submitted to a popular referendum either. The 1999 Constitution, however, was approved via a referendum.

Transformation Via "Reform"

¶5. (SBU) Although Chavez boasts that he intends to make profound "socialist" changes to the 1999 Constitution (the "second motor of the revolution"), he nevertheless proposes to use the "reform" process instead of convoking a Constituent Assembly. Chavez told his supporters and the media January 17 that he does not intend to change the structure or fundamental "laws" of the 1999 Constitution. He

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also added that at the same time the Constitution does not put a numerical limit on the number of revisions, which he said could number "100, 200, or all" so long as the changes do not alter the structure and fundamental principles of the text. Chavez also argued that the Constituent Assembly is only required to create a new constitution, something "we do not need."

¶6. (SBU) Chavez hand-picked 13 loyal supporters to sit on the Presidential Committee for Constitutional Reform, headed by National Assembly President Cilia Flores. Five NA members are on the commission: NA Vice President Roberto Hernandez, Carlos Escarra, Noeli Pocaterra, Ricardo Sanguino, and Earle Herrera. Escarra, Sanguino, and Herrera belong to Chavez' Fifth Republic Movement (MVR) party; Hernandez is a leader of the Venezuelan Communist Party, and Pocaterra is a member of an Indigenous People's rights organization (CONIVE). Chavez also named newly-elected President of the Supreme Tribunal of Justice Luisa Estalla Morales, Human Rights Ombudsman German Mundarain, Labor Minister Jose Ramon Rivero, Executive Counsel Gladys Gutierrez, leftist writer Luis Britto Garcia, lawyer Jesus Martinez and Attorney General Isaias Rodriguez. Although the Commission will propose ideas, "the President decides," as Carlos Escarra told the media.

¶7. (C) Escarra told PolCouns January 31 that the constitutional reform commission hopes to deliver a draft proposal to Chavez by late February or early March (Ref B). He predicted Chavez would take one to two weeks to review their suggestions before submitting a formal package of proposed constitutional changes to the NA by mid-March. NA President Cilia Flores told the pro-government daily "Vea" that the committee has reviewed the constitution top-to-bottom and will provide Chavez with a first draft of proposed reforms the week of February 12. Escarra also said the National Assembly would hold public hearings on the changes over a period of three to four months and would put the "reforms" to a popular referendum by mid-September.

Chavez hedges the timeline in his speeches, saying he expects a referendum to be held sometime in 2007. Chavez will issue decree-laws under the Enabling Law (the "first motor of the revolution") both before and after passage the constitutional changes, according to Escarra.

What's Coming Next?

¶8. (SBU) Indefinite Re-election: Chavez and his supporters have suggested a series of constitutional changes they would like to make, but have not yet released texts for public analysis and debate. Chavez' primary interest appears to be to change the Constitution's two-term limit on the Presidency (Article 230). Chavez was first elected President in 1998, prior to the adoption of the 1999 Constitution, under which he was elected in 2000 and re-elected on December 3, 2006. During the 2006 presidential campaign, the Venezuelan president expressed interest in remaining president until 2021 or 2030, well beyond the six-year term ending 2012 to which Article 230 currently confines him. Chavez defends the proposed change by stressing that he is only responding to the "people's will."

¶9. (SBU) De-decentralization: Chavez is also likely to make constitutional changes to institute his new "geometry of power" (the "fourth motor of the revolution") to concentrate more power in the hands of the executive at the expense of state and local governments. Chavez will need constitutional changes in order to institute his plans to:

- redistrict existing state and local governments;
- create new federal cities and territories;
- establish economic development regions;
- eliminate and merge many municipalities; and,
- remove ("scratch out") governors and mayors.

Some opposition leaders suspect Chavez is interested in assuming powers formerly attributed to the President to appoint state governors. There are currently only two opposition governors in Venezuela's 23 states and opposition politicians occupy fewer than a third of the mayorships. Most opposition parties are currently focusing on state and local elections slated for 2008 as a means of rebuilding.

¶10. (SBU) Greater State Control of the Economy: Chavez and
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his supporters have also announced their intention to:

- eliminate the autonomy of the Central Bank (Article 318);
- strengthen the ability of the state to intervene in the oil and gas industry (Articles 302 and 303);
- provide for the promotion of "social property" (e.g. public housing cooperatives);
- provide a foundation for as yet unspecified changes to the Commercial Code.

Chavez' stated goal of his economic changes to the Constitution and through the Enabling Law (Ref B) is to institute a Venezuelan brand of socialism.

¶11. (SBU) Symbolic Changes: Chavez and his supporters have expressed interest in making a number of symbolic changes to the Constitution to reinforce the "Bolivarian" roots and "socialist" direction of his government. Chavez is considering changing the name of the Bolivarian Republic of Venezuela to the Socialist Bolivarian Republic of Venezuela and changing the name of the National Armed Forces to the Bolivarian Armed Forces (BRV spokespersons have already adopted this appellation). In addition, many Chavistas want to "clarify," or even eliminate, Article 350 which permits the Venezuelan people to "not recognize any government, legislation, or authority that contradicts the values, principles, democratic guarantees or infringes on human rights." A number of NA members have expressed concern that the opposition could try to use the article as legal "cover" for civil disobedience and protests, although it is highly unlikely that the pro-Chavez courts would interpret the

article as such.

Opposition Prepares Alternatives

¶112. (C) Zulia Governor and de facto opposition leader Manuel Rosales announced December 6, 2006, that the mainstream opposition would develop its own set of proposals for constitutional changes. He expressed particular interest in moving to a four-year presidential term with the possibility of only one re-election. He also mentioned opposition interest in shoring up constitutional protections for decentralization of power, the protection of private property, better distribution of oil revenues, and stronger anti-corruption measures. Rosales subsequently appointed his own technical commission to draft the texts. Justicia Popular leader Gerardo Blyde, Secretary General of that commission, recently told poloff that the expert panel is working, but also waiting to respond to Chavez' specific proposals once they are released. Rosales originally intended to appoint a political commission to review the technical commission's recommendations, but he has not yet done so due, in part, to continued in-fighting among opposition parties.

¶113. (C) A number of constitutional experts, including Carlos Escarra's brother Hermann Escarra, are also publicly disputing Chavez' assertion that he can achieve the changes to the constitution he has previewed via the "reform" process. In their view, eliminating presidential term limits and redistributing power from state and local governments to the executive alter fundamental principles of the 1999 Constitution and therefore require a Constituent Assembly, in which the opposition could demand a voice, to enact them. (Note: The opposition was a vocal minority in the Constituent Assembly that drafted the 1999 Constitution. In stark contrast, the opposition, due to its boycott of the 2005 parliamentary election, has no members in the National Assembly that would deliberate on "reforms." It's still not clear whether the NA actually plans to open the proposed changes to floor debates.) The opposition could pursue a legal challenge on procedural grounds before the Constitutional Tribunal, but Luisa Estella Morales, a member of the president's constitution commission, heads that court.

¶114. (C) Some opposition activists are also considering a public campaign later this year to try to force Chavez to put up his proposals for constitutional changes for item-by-item consideration in the public referendum. Noting that public opinion polls show that a large majority of Venezuelans do not support indefinite re-election, opposition strategists would like a straight up-or-down vote on that provision rather than confront the Chavez electoral machine on a whole

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package of changes. While the NA is likely to submit the constitutional changes to a public referendum as a package, five percent of the elected voters may require that up to one-third of proposed constitutional reforms be put to a separate referendum.

Comment

¶115. (C) The National Assembly recently transferred broad legislative authority to President Chavez for the next 18 months via the Enabling Law, and we expect the compliant, 100-percent pro-Chavez NA to rubber stamp Chavez' constitutional changes. Unlike the drafting of the 1999 Constitution, the opposition has no formal role in the deliberative process except having the "opportunity" to queue up with for the NA's Potemkin "public consultations" (along with convoked red-shirted delegates). Invoking the "will of people," we expect Chavez to take particular aim at state and

local governments and the private sector where some of the most significant pockets of opposition to Chavez' "socialist revolution" remain. At the same time, the opposition may have a political opportunity to exploit Chavez' determination to eliminate presidential term limits. The charismatic Chavez secured 63 percent of the vote in December 2006 and remains popular, but Venezuelans, including many Chavistas, are understandably uncomfortable with a president who talks openly of governing until at least 2030.

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